

**MEMORANDUM**RECEIVED
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TO: Zoning Commission for the District of Columbia

FROM: *JS* Jennifer Steingasser, Deputy Director for Development Review & Historic Preservation

DATE: July 2, 2010

SUBJECT: **Zoning Commission Case 10-18- Setdown Report** - Proposed zoning text amendments related to allow additional flexibility for fast food establishments and prepared food shops within Square 375.

I. RECOMMENDATION

OP recommends that the following proposed text amendment be set down for a public hearing:

- Amend the list of arts and arts-related uses in § 1711 and the ground floor use requirements in § 1703 to allow fast food establishments and prepared food shops as restaurant uses within Square 375.

This report also serves as the prehearing report required by § 3013.

II. BACKGROUND

This request is initiated by the Office of Planning, at the request of the First Congregational Church of Christ, to allow fast food and prepared food shops to be considered "preferred uses" within Square 375. Currently, zoning requires the provision of preferred uses in accordance with § 1703. "Restaurants" are listed in § 1711 as a preferred use; however neither fast food establishments nor prepared food shops are defined as restaurants.

Square 375 is bounded by H Street NW (north), 9th Street NW (east), G Street NW (south), and 10th Street NW (west). G Place NW runs east-west through the center of the square. The square is mainly comprised of office and institutional uses, including the Office of Homeland Security and Martin Luther King public library.

ZONING COMMISSION
District of Columbia

III. ZONING

The subject square is located in the DD/C-4 zone. The C-4 Central Business District zone encompasses the downtown office and retail core for the District. The zone permits a variety of retail, commercial, and business uses including high-density, mixed-use development. The Downtown District Overlay (DD) is designed to accomplish the land use and policy objectives found within the Comprehensive Plan that affect the District's downtown shopping district and retail core. The site is within the Arts area of the Downtown Shopping District (SHOP).

Square 375 is subject to both the area-wide and site specific use and design standards of the DD overlay. The square is also located within the Downtown Retail Core (as designated within the Comprehensive Plan) and the portion south of G Place is part of the Downtown Arts District (see Exhibit 3). As a result, development within this square is subject to several layers of use requirements, all aimed at creating arts-related or arts-supporting uses in Downtown and concentrating retail and service uses at the ground level on certain streets.

The permitted retail and service uses found in § 1710 include several types of retail stores including fast-food establishments. Section 1711 focuses on arts uses which mainly include galleries, theaters, museums, and performance spaces. In addition, this section also allows arts-related support uses which includes restaurants but does not include fast food establishments or prepared food shops (see Exhibits 4 and 5). Uses listed in §§ 1710 and 1711 are required to occupy 50% of the ground floor area (pursuant to § 1702), but fast food establishments and prepared food shops are among the uses limited to 20% of the ground floor in § 1703 (b).

IV. PROPOSED TEXT

The following changes are proposed with new text shown in **BOLD** and **UNDERLINED**:

Chapter 17, DOWNTOWN DEVELOPMENT OVERLAY

Section 1703, Downtown Shopping District (Retail Core) is amended by adding new language to § 1703.3 to read as follows:

1703 DOWNTOWN SHOPPING DISTRICT (RETAIL CORE)

1703.3 Each new or altered building that faces or abuts a public street shall devote all of the ground floor leasable space to the retail and service uses listed in § 1710 or the arts and arts-related uses listed in § 1711; provided:

- (a) The gross floor area devoted to the retail, service, arts and arts-related uses listed in §§ 1710 and 1711 shall be no less than 0.5 FAR on the ground floor;**
- (b) Not more than 20% of the required gross floor area on the ground floor shall be occupied by banks, loan offices, other financial institutions, travel agencies, or other transportation ticket office, prepared food shops, fast food establishments, printing or fast copy services, newsstands, dry cleaners, or any combination thereof;**
- (c) This ground floor use requirement shall not apply to a building that is devoted entirely to hotel or apartment house use or to a church or other place of worship; and**
- (d) In the applicable sector of the Downtown Arts District, that is Squares 254, 290, 321, 347, 377, 376, and 375 (south of G Place), uses that are listed in §**

1711 shall comprise not less than 50% of the gross floor area required to be devoted to preferred uses.

(e) On Square 375, fast food establishments and prepared food shops shall not be subject to the 20% limit of § 1703.3 (b)

Section 1711, Arts Uses and Arts-Related Uses, is amended by adding new language to § 1711.1 to read as follows:

1711 ARTS USES AND ARTS-RELATED USES

1711.1 For the purpose of this chapter, the following uses are preferred arts uses and arts-related retail and support uses:

(a) Art Center;

(v) Fast food establishments (excluding drive-through) and prepared food shops, only within Square 375.

V. ANALYSIS

The requested amendment would expand the list of uses within § 1711 such that fast food establishments and prepared food shops be permitted as arts-related uses, but only within Square 375. This would allow these uses to occupy more than 20% of the ground floor. The owner of the new building proposed for Lot 823 wishes to have these uses occupy more than 50% of the ground floor retail space, consistent with § 1710. OP feels it is appropriate, an in keeping with the Comprehensive Plan, to apply this allowance to the entire square.

The purpose of the use provisions within Chapter 17 is to implement the land use and development policies of the Comprehensive Plan that address this part of the District. Generally, this includes encouraging a balanced mix of uses with a particular focus on retail, residential, and arts-related uses.

To that end, the current requirements found within §§ 1702 and 1703 apply to buildings within the prescribed areas with frontage on public streets, as a way to foster pedestrian friendly conditions that support these desired uses. However, the current physical conditions within portions of the square severely limit the feasibility of creating the retail environment the regulations are trying to encourage. For example, while G Place NW is technically a public street, the roadway is only 40' wide and it functions more like an alley. The street is characterized by loading zones and parking entrances that serve the library and adjacent office building.



View looking northeast on G Place NW

10th Street NW is similarly situated, due to the presence of parking and loading facilities for the Grand Hyatt hotel and office uses on the west side of 10th street. The only street within the square that currently has ground floor retail and service uses is 9th Street NW, which contains a restaurant and a bank use. As such, OP feels that while the proposed amendment is particularly relevant to the lots with frontage on G Place and 10th Streets, it is also appropriate for the entire square, given its existing improvements and character. Despite the current conditions, ground floor retail remains a

desirable goal within the square and should continue to be encouraged. The proposed amendment would allow for additional flexibility in this regard.

Proposed Amendment

The proposed text amendment would allow for fast food establishments and prepared food shops to locate under the same parameters as restaurant uses within Square 375. Fast food uses are already a preferred retail and service use in the Downtown District overlay, as identified in § 1710. While prepared food shops aren't among the preferred uses listed in §§ 1710 and 1711, they are addressed in §1703.3 and permitted in the zone. Prepared food shops are also permitted as-of-right in most commercial and mixed-use zones, often with size limitations. Fast food establishments with drive through facilities would continue to be prohibited in the square. The proposal maintains the existing controls for preferred uses elsewhere in the retail core and limits the additional uses to eating establishments. Definitions of each type of use are provided below for your reference.

Fast food establishment - a place of business, other than a "prepared food shop," where food is prepared on the premises and sold to customers for consumption and at least one of the following conditions apply:

- (a) *The premises include a drive-through;*
- (b) *Customers pay for the food before it is consumed. One characteristic that would satisfy this element would be building permit plans that depict a service counter without seating unless the applicant certifies that the intended principal use is for a restaurant or grocery and that the counter is part of a carry out service that is clearly subordinate to that principal use; or*
- (c) *Food is served on/in anything other than non-disposable tableware. Characteristics that would satisfy this element include, but are not limited to: the building permit plans do not depict a dishwasher or do depict trash receptacles in public areas.*

A proposed or existing establishment meeting this definition shall not be deemed to constitute any other use permitted under the authority of these regulations, except that a restaurant, grocery store, movie theater, or other use providing carryout service that is clearly subordinate to its principal use shall not be deemed a fast-food establishment. (54 DCR 9393)

Prepared food - food that is assembled, but not heated by means other than microwave or toaster, on the premises of a prepared food shop. (54 DCR 9393)

Prepared food shop - a place of business that offers seating or carry out service, or both, and which is principally devoted to the sale of prepared food, non-alcoholic beverages, or cold refreshments. This term includes an establishment known as a sandwich shop, coffee shop, or an ice cream parlor. (54 DCR 9393)

Restaurant - a place of business that does not meet the definition of a "fast food establishment" or "prepared food shop," where food, drinks, or refreshments are prepared and sold to customers primarily for consumption on the premises. Any facilities for carryout shall be clearly subordinate to the principal use providing prepared foods for consumption on the premises. (32 DCR 4374 and 54 DCR 9393)

VI. COMPREHENSIVE PLAN

The proposed amendment would not be inconsistent with the 2006 Comprehensive Plan. The proposed change is limited in terms of its impact and would generally support the following policy statements of the Central Washington element:

Policy CW-1.1.1: Promoting Mixed Use Development

Expand the mix of land uses in Central Washington to attract a broader variety of activities and sustain the area as the hub of the metropolitan area. Central Washington should be strengthened as a dynamic employment center, a high-quality regional retail center, an internationally-renowned cultural center, a world-class visitor and convention destination, a vibrant urban neighborhood, and the focus of the regional transportation network. New office and retail space, hotels, arts and entertainment uses, housing, and open space should be encouraged through strategic incentives so that the area remains attractive, exciting, and economically productive. 1608.2

Policy CW-1.1.9: Neighborhood-Serving Retail in Central Washington

Ensure that Central Washington's retail uses serve not only the regional market, but also the local neighborhood market created by residential development within the area. This should include basic consumer goods like drug stores, hardware stores, and grocery stores, to supplement the major anchors and specialty shops. 1608.10

Policy CW-2.1.3: Creating a Critical Mass of Retail Choices

Improve Downtown's viability as a shopping destination by encouraging additional small retailers to locate around existing retail anchors, adding new major retail anchors, and requiring continuous ground floor retail space wherever appropriate. Encourage the greatest possible variety of goods, services, and pricing so that the Retail Core meets the needs of a diverse range of residents, employees, and visitors. 1611.8

The proposed text amendment would expand opportunities for retail development within a square that is not currently home to many ground floor retail uses. The potential impact of the proposed change on the existing street environment would be minimal as the square is completely built out and already largely comprised of office and institutional uses. Finally, the amendment would allow the introduction of fast food and prepared food shops on a limited basis and maintain current policy objectives regarding ground floor retail throughout the remainder of Downtown.

VII. RECOMMENDATION

Based on the above discussion and the objectives of the Comprehensive Plan, the Office of Planning recommends that the proposed amends be set down for public hearing.

JS/ayj

Attachments:

- Exhibit 1 – Lot map with building footprints
- Exhibit 2 – Aerial Photograph (2009)
- Exhibit 3 – Context Map for DD Retail Core
- Exhibit 4 – List of Retail and Service Uses (§ 1710)
- Exhibit 5 – List of Arts and Arts-Related Uses (§ 1711)

1710 RETAIL AND SERVICE USES

1710.1 For the purposes of this chapter, the following uses are preferred retail and personal/consumer service uses:

- (a) Anchor Store;
- (b) Antique Store;
- (c) Apparel and Accessories Store;
- (d) Appliance Store;
- (e) Auction House;
- (f) Auto and Home Supply Stores, excluding installations;
- (g) Bakery, limited to baking of food sold on premises;
- (h) Bank Loan Office, Savings & Loan, Credit Union, or Other Financial Institution;
- (i) Barber or Beauty Shop;
- (j) Bicycle Shop;
- (k) Camera Store;
- (l) Candy Store;
- (m) Child Development Center;
- (n) Computer Store;
- (o) Cosmetic Store;
- (p) Delicatessen;
- (q) Department Store;
- (r) Dressmaking or Tailor Shop;
- (s) Drug Store;
- (t) Dry Cleaners;
- (u) Fabric Store;
- (v) Fast Food Establishment, excluding drive-through;
- (w) Florist and Plant Stores;
- (x) Furniture Store;
- (y) Gift, Novelty, and Souvenir Shop;

- (z) Grocery Store;
 - (aa) Hardware Store;
 - (bb) Health or Exercise Studio;
 - (cc) Hobby, Toys, and Game Shop;
 - (dd) Home Furnishings Store;
 - (ee) Jewelry Store;
 - (ff) Liquor Store;
 - (gg) Luggage and Leather Goods Store;
 - (hh) Newsstand;
 - (ii) Office Supplies and Equipment Store;
 - (jj) Optician;
 - (kk) Paint Store;
 - (ll) Pet Store;
 - (mm) Printing, Fast Copy Service;
 - (nn) Radio, Television, and Consumer Electronics Store;
 - (oo) Secondhand Store;
 - (pp) Shoe Repair and Shoeshine Parlor;
 - (qq) Shoe Store;
 - (rr) Specialty Food Store;
 - (ss) Sporting Goods Store;
 - (tt) Telegraph Store;
 - (uu) Tobacco Store;
 - (vv) Travel Agency, Ticket Office;
 - (ww) Variety Store;
 - (xx) Video Tape Rental; and
 - (yy) Other similar personal/consumer service establishment or retail uses, including assemblage and repair clearly incidental to the principal use.

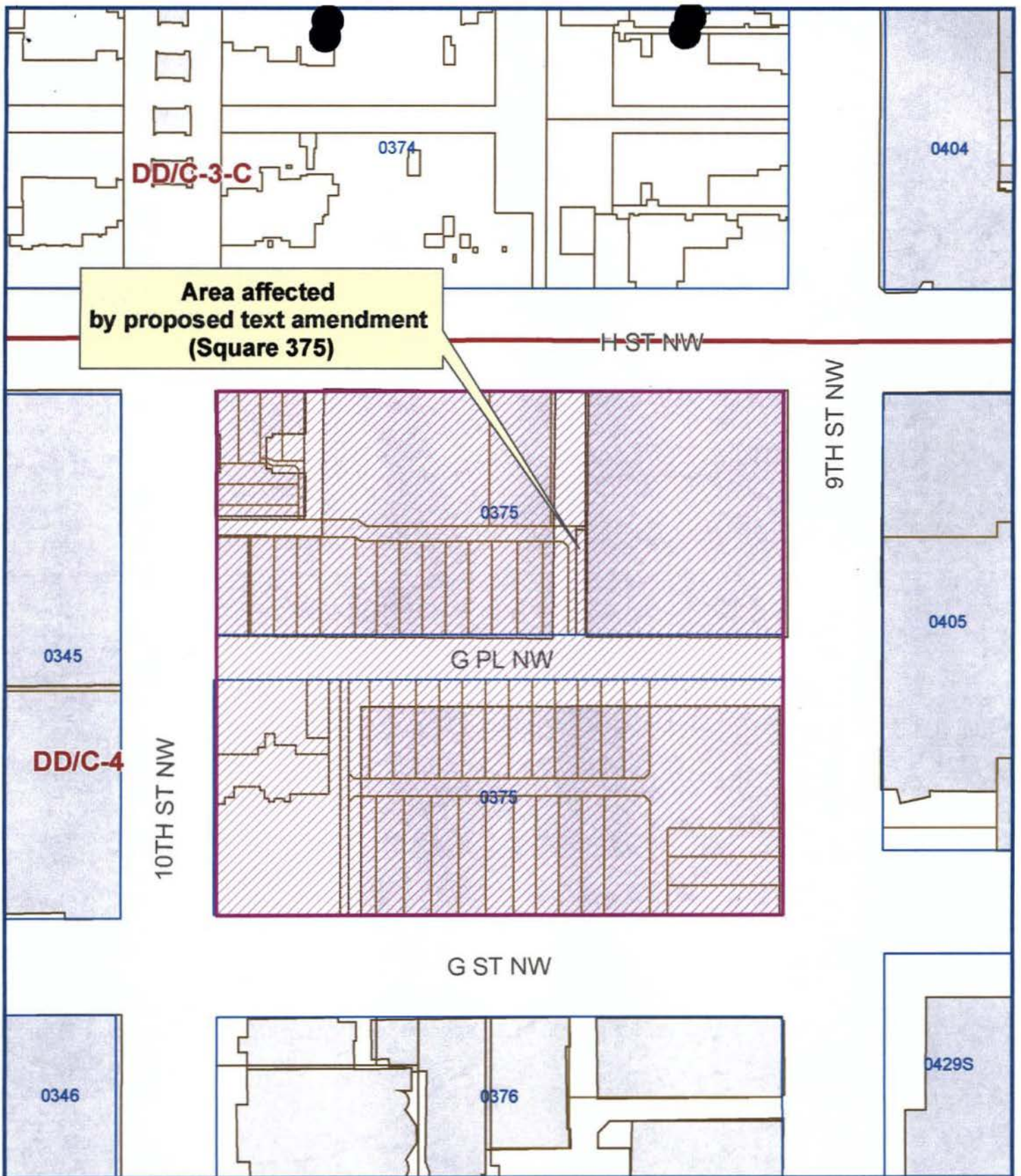
SOURCE: Final Rulemaking published at 38 DCR 612, 640 (January 18, 1991); as amended by Final Rulemaking published at 54 DCR 9393, 9400 (September 28, 2007).

1711 ARTS USES AND ARTS-RELATED USES

1711.1 For the purpose of this chapter, the following uses are preferred arts uses and arts-related retail and support uses:

- (a) Art Center;
- (b) Art Exhibition Area;
- (c) Art Gallery;
- (d) Art School, including school of dance, photography, filmmaking, music, writing, painting, sculpturing, or printmaking;
- (e) Artist Live-Work Space;
- (f) Artist Studio;
- (g) Artists' Supply Store;
- (h) Arts Organizations, Administrative Offices of;
- (i) Arts Services, including set design, and restoration of art works;
- (j) Assembly Hall, Auditorium, Public Hall, or Other Performing Arts Space, including rehearsal/pre-production space or concert hall;
- (k) Book Store;
- (l) Cabaret;
- (m) Dance Hall, Discotheque, or Ballroom;
- (n) Dinner Theater;
- (o) Drinking Place, including bar, nightclub, or cocktail lounge;
- (p) Legitimate Theater;
- (q) Movie Theater;
- (r) Museum;
- (s) Performing Arts Ticket Office or Booking Agency;
- (t) Photographic Studio;
- (u) Picture Framing Shop;
- (v) Record Store, Musical Instruments Store;
- (w) Restaurant; and
- (x) Television and Radio Broadcast Studio.

SOURCE: Final Rulemaking published at 38 DCR 612, 641 (January 18, 1991).



Legend

- Zoning Districts
- Tax Lots
- Record Lots
- Buildings
- Street Centerlines

Exhibit 1 - Lot map with building footprints

This map was created for planning purposes from a variety of sources. It is neither a survey nor a legal document. Information provided by other agencies should be verified with them where appropriate.

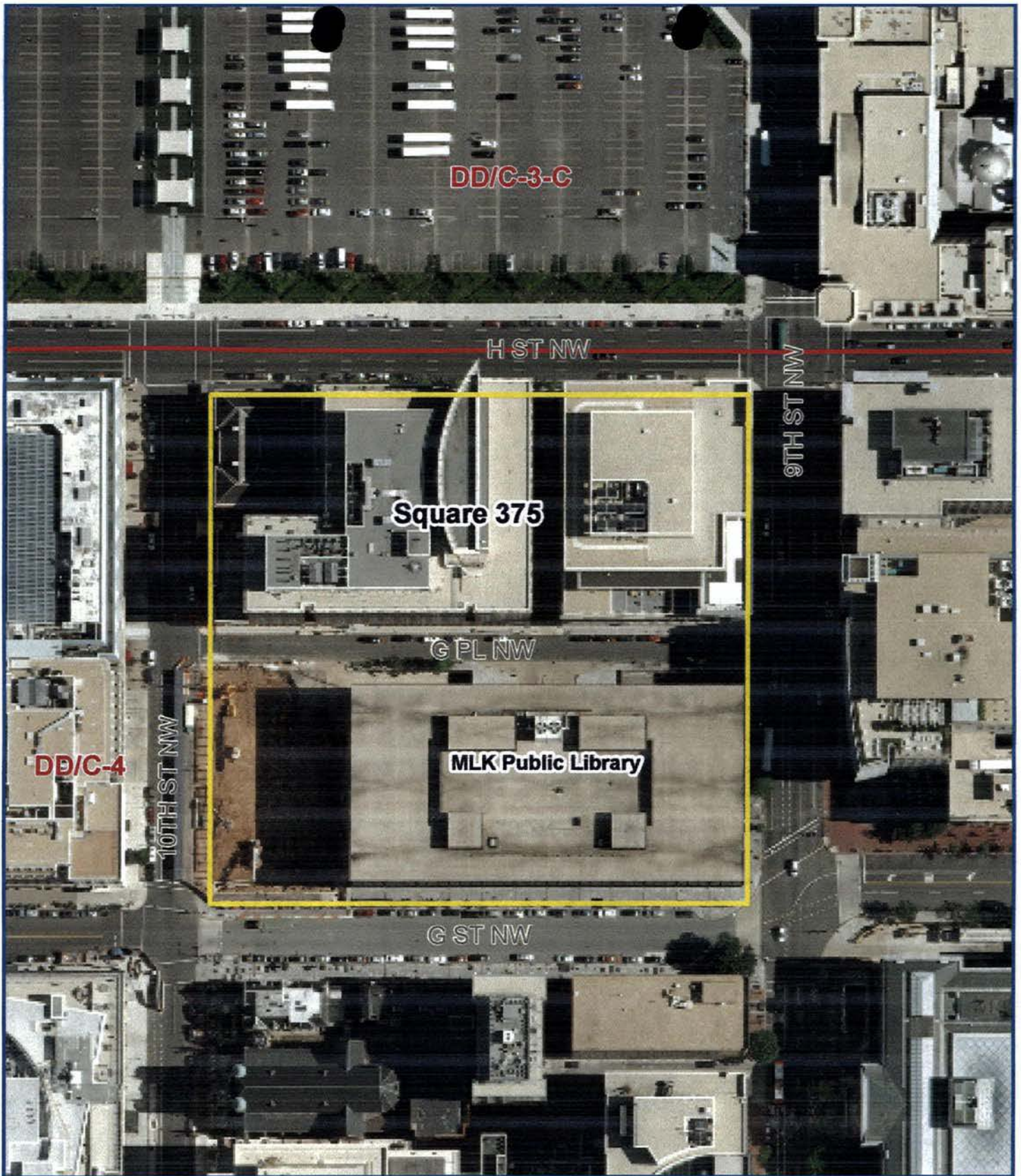


Exhibit 2 - Aerial Photograph (2009)

Legend

-  Zoning Districts
-  Street Centerlines

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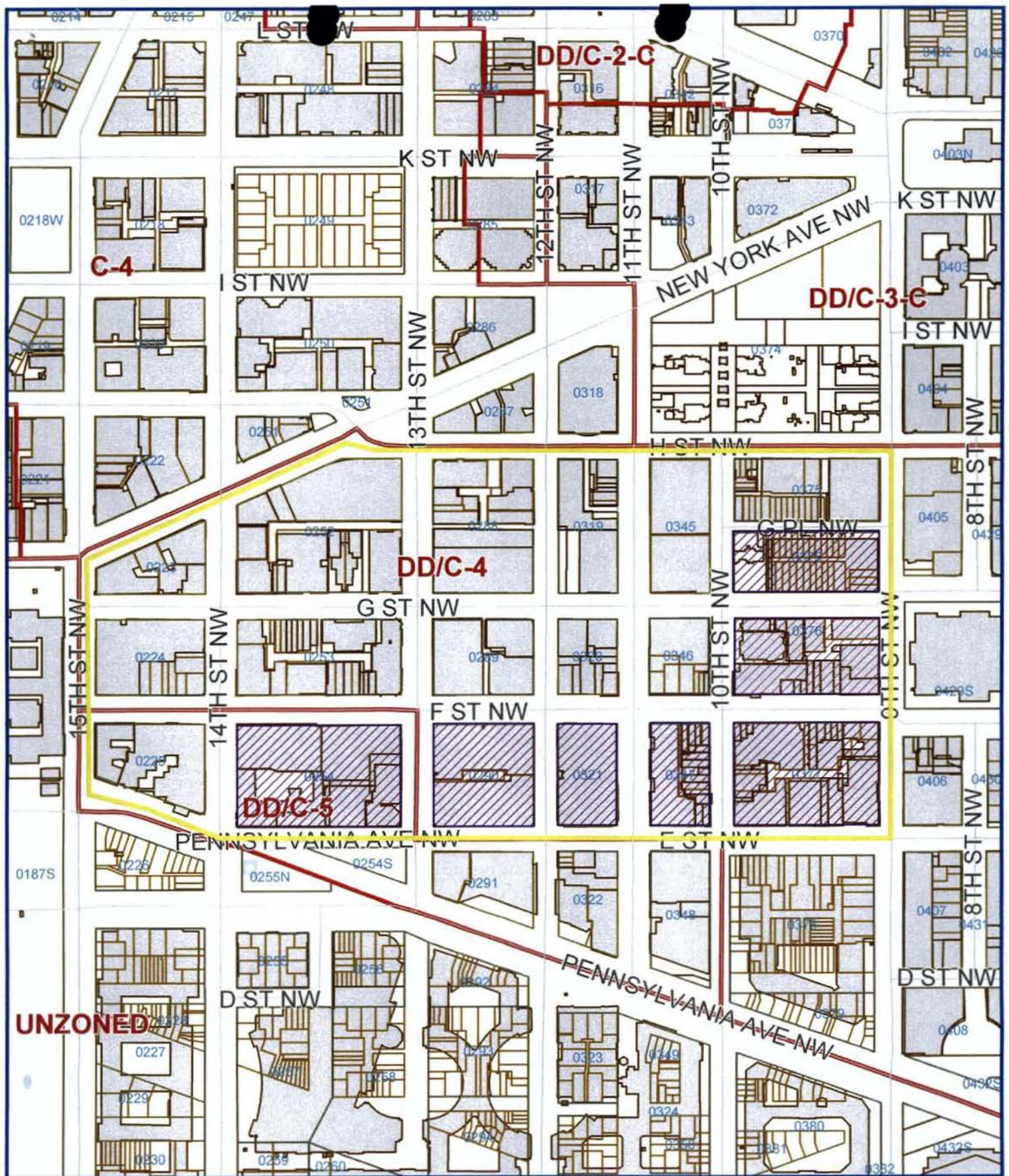


Exhibit 3 - Context Map for DD Retail Core

Legend

- Zoning Districts
- Property Squares
- Buildings
- Street Centerlines
- Downtown Retail Core
- Downtown Arts District

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